

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES HALL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1328-GMS
)	
DAVID HOLMAN, Deputy Warden)	
LAWRENCE MEGUIGAN, and)	
Acting Deputy Warden Clyde Sagers)	
)	
Defendants.)	

**DEFENDANTS' MOTION FOR
ENLARGEMENT OF TIME**

COME NOW, defendants David Holman, Lawrence Mcguigan (deceased), and Clyde Sagers ("Defendants"), by and through undersigned counsel, and hereby move this Honorable Court, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, to enter an Order enlarging the time within which to complete fact discovery in the above-captioned case. In support of their motion, Defendants allege as follows:

1. On or about October 4, 2004, James Hall ("Plaintiff"), an inmate who was at that time incarcerated at the Delaware Correctional Center in Smyrna, Delaware, commenced an action by forwarding the complaint and a request to proceed *in forma pauperis* to the United State District Court for the District of Delaware. (D.I. 1, 2). Plaintiff filed an Amended Complaint on February 4, 2005. (D.I. 4). On July 19, 2005, an Order was issued, granting Plaintiff *in forma pauperis* status. (D.I. 6). On August, 26, 2005, the Court ordered service of the complaint when all "U.S. Marshall – 285" forms have been received by the Clerk of the court. (D.I. 8). Plaintiff filed a Second Amended Complaint on or about September 9, 2005. Waiver of Service forms were executed by all defendants.

2. On or about December 8, 2005, Defendants filed a Motion to Dismiss/Summary Judgment. (D.I. 28). On or about December 27, 2005, Plaintiff filed a Motion for Summary Judgment (D.I. 33).

3. Prior to the Court's decision on the dispositive motions, Plaintiff, on October 31, 2005, filed discovery on Defendants.¹ Defendants filed a Motion to Stay Discovery given the pending dispositive motions. (D.I. 26).

4. On or about July 14, 2006, Plaintiff updated his address with the Court to indicate he was moved to the Violation of Probation building in Delaware Correctional Center or Georgetown. (D.I. 38).

5. On or about July 31, 2006, Plaintiff again updated his address with the Court. The new address provided was 6269 Oxon Hill Road, Apt. B-1, Oxon Hill, MD 20745-3079.

6. In August of 2006, still prior the Court's decision on dispositive motions, Plaintiff filed a second request for discovery on Defendants. Plaintiff indicated within the requests that the discovery was to be mailed to 10904 Hidden Creek Court, Fort Washington, MD, 20744. It is not clear whether this second request was filed with the Court. It does not appear on the Court Docket, but the top of the docket did list the Fort Washington address.

7. On September 8, 2006, the court issued an Order dismissing the official capacity claims against defendants and allowing the individual capacity claims to proceed. The Court denied Plaintiff's Motion for Summary Judgment. (D.I. 43). The Court also denied Defendants' Motion to Stay Discovery as moot. (D.I. 43).

8. On or about September 21, 2006, Defendants filed an Answer to Plaintiff's First and Second Amended Complaints. (D.I. 44).

¹ The only indication that attempt was made to file the discovery requests with the Court is a deficiency notice sent to Plaintiff on October 31, 2005, returning all of his discovery documents.

9. On or about January 5, 2007, Defendants filed Responses to Plaintiff's discovery requests. (D.I. 47-50).

10. On or about January 9, 2007, counsel for Defendants filed a Suggestion of Death for Lawrence McGuigan. (D.I. 51.).

11. On or about February 2, 2007, counsel for Defendants discovered that documents filed between January 5, 2007 and January 9, 2007 (D.I. 47-52) were sent to plaintiff at 10904 Hidden Creek Ct., Ft. Washington, MD 20744 as that was the address listed at the top of the docket and the address given by Plaintiff in his second discovery requests. The docketed items were not returned as undeliverable, however, in preparing to file a new document it was discovered that the most recent official address update provided by Plaintiff to the Court was 6269 Oxon Hill Road, Apt. B-1, Oxon Hill, MD, 20745. Defendants memorialized this in a letter to the Court and re-noticed and sent Docket Items 47-52. (D.I. 53, 56). The filings have not been returned as undeliverable by the post office.

12. Defendants filed Interrogatories and Requests for Production of Documents and Things on Plaintiff at the Oxon Hill address on February 2, 2007. (D.I. 54, 55). To date, Plaintiff has not responded to the discovery requests and the items have not been returned by the post office.

13. Counsel for Defendants sent a letter to Plaintiff on February 28, 2007 explaining that Defendants seek to take the deposition of Plaintiff and requesting that Plaintiff contact counsel to discuss possible deposition dates. See Exhibit A. To date, Plaintiff has not responded to the letter or otherwise communicated with defense counsel. The letter has not been returned by the post office as undeliverable.

14. Counsel for Defendants sent a second letter to Plaintiff on March 16, 2007, again

requesting that Plaintiff contact counsel to coordinate dates and requesting responses to outstanding discovery. See Exhibit B. To date, Plaintiff has not responded or otherwise communicated with defense counsel. Counsel for defendants most recently sent the letter attached as Exhibit C.

15. The discovery deadline in this action is March 21, 2007. (D.I. 45). Defendants have complied with the Federal Rules by responding to Plaintiff's discovery requests. Defendants have also timely filed requests for discovery. Plaintiff, however, has not responded to discovery requests or cooperated with counsel for Defendants to arrange a deposition date.

16. As a result of Plaintiff's failure to respond or communicate, Defendants have been unable to complete discovery within the Court's deadline and have been prejudiced in their preparation of a defense.

17. Defendants thus seek an enlargement of 45 days to the discovery deadline to complete discovery.

WHEREFORE, pursuant to Federal Rule 6(b), for the hereinabove reasons, Defendants respectfully request that this Honorable Court grant Defendants request for an extension of time and set the deadline for the completion of fact discovery to May 4, 2007.

**STATE OF DELAWARE
DEPARTMENT OF JUSTICE**

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6th fl.
Wilmington, DE 19801
(302) 577-8400

Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES HALL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1328-GMS
)	
DAVID HOLMAN, Deputy Warden)	
LAWRENCE MEGUIGAN, and)	
Acting Deputy Warden Clyde Sagers)	
)	
Defendants.)	

16.5 CERTIFICATE OF COUNSEL

In compliance with Local Rule of Civil Procedure 16.5, counsel for the Defendants making the request for enlargement of time to complete discovery files this Certificate and states:

I certify that the Defendants have been provided with copies of the Motion for Enlargement of Time and that service has been sent by regular mail.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE
/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
820 N. French Street, 6th floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us
Attorney for Defendants

Date: March 21, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES HALL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1328-GMS
)	
DAVID HOLMAN, Deputy Warden)	
LAWRENCE MEGUIGAN, and)	
Acting Deputy Warden Clyde Sagers)	
)	
Defendants.)	

7.1.1 CERTIFICATION OF COUNSEL

Counsel for the Defendants files this certification in compliance with Rule 7.1.1 of the Local Rules of Civil Procedure and certifies that:

1. Plaintiff is unable to be reached by telephone as he did not provide a telephone number with his address update upon his release from prison.
2. Plaintiff has not responded to counsel for defendants previous attempts to communicate through correspondence. Thus counsel for the defendants has spent no time in attempting to reach an agreement on the subject of the motion for enlargement of time.
3. Accordingly, counsel assumes that the motion is opposed.

DEPARTMENT OF JUSTICE
STATE OF DELAWARE

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos, ID#4667
Deputy Attorney General
Department of Justice
State of Delaware
Carvel State Office Building
820 North French Street, 6th Fl.,

Wilmington, DE 19801
(302) 577-8400

Attorney for Defendants

Dated: March 21, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JAMES HALL,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 04-1328-GMS
)	
DAVID HOLMAN, Deputy Warden)	
LAWRENCE MEGUIGAN, and)	
Acting Deputy Warden Clyde Sagers)	
)	
Defendants.)	

ORDER

This _____ day of _____, 2007,

WHEREAS, Defendants having requested an enlargement of time of forty five (45) days in which to complete fact discovery; and

WHEREAS, there being good cause shown for the granting of such motion;

IT IS HEREBY ORDERED, that Defendants' Motion for Enlargement of Time be granted and the parties shall complete fact discovery on or before May 4, 2007.

United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2007, I electronically filed *Defendants' Motion for an Enlargement to the Discovery Deadline* with the Clerk of Court using CM/ECF. I hereby certify that on March 21, 2007, I have mailed by United States Postal Service, the document to the following non-registered party:

James Hall
Pro Se
6269 Oxon Hill Road
Apt. B-1
Oxon Hill, MD 20745-9079

and

10904 Hidden Creek Court
Ft. Washington, MD 20744

/s/ Stacey Xarhoulakos
Stacey Xarhoulakos (I.D. 4667)
Deputy Attorney General
Department of Justice
820 N. French St., 6th Floor
Wilmington, DE 19801
(302) 577-8400
stacey.xarhoulakos@state.de.us
Attorney for Defendants

Dated: March 21, 2007